from the face of the ticket the conductor should see that a mistake had been made, — as where a mileage book was marked to expire on the day that it was issued.[5] Now, when the passenger pays his money to the ticket agent, no contract is formed by which the railroad agrees to carry the passenger to his destination. It is not the business of the ticket agent to make contracts for the railroad, but to sell tickets.[6] Therefore the courts which hold to the above view, and yet say that it is a contract and not the ticket that gives the right to transportation, misinterpret completely the nature of the ticket. The true view is that the ticket is the sole valid evidence of the passenger's right to be upon the car.[7] To conduct railroads on any other principle would be impossible.[8] A person who is not supplied with the proper ticket is not rightfully upon the car, and his eviction upon failure to pay another fare is lawful, except that courts might draw the line in the rare case where the conductor actually knows the true facts. The railroad is of course liable; not, however, for a wrongful eviction, but in an action of contract for breach of implied warranty in failing to supply the ticket asked for,[9] or possibly in an action on the case founded on the negligence of the ticket agent. In either case, however, the passenger should suffer the inconvenience of paying another fare, and should not be allowed to increase the damages by requiring the conductor to eject him.[10]

THE TAXABLE SITUS OF TANGIBLE PERSONAL PROPERTY. — It is elementary that a state cannot tax tangible property which has neither a legal nor a physical situs therein.[1] A tax on tangible property is in theory a price exacted for protection given; and if the property is neither actually nor constructively situated where it can enjoy such protection, the tax is constitutionally invalid, as a taking of property without due process of law.[2] How far a state may constitutionally tax its citizens according to their ability to pay, — as by a tax on incomes, — or exact a price for a privilege conferred, — such as a franchise, — presents different questions, which will not be discussed. The question here is simply how and when tangible personalty acquires a situs in one or more states, so that a tax thereon is constitutionally valid.

In ancient times the maxim *mobilia sequuntur personam* applied alike to tangible and intangible personalty. To-day, if tangible personalty remains in a state a sufficient time, it may acquire a taxable situs therein, though the owner is domiciled in another state.[3] If, however, the use to which the property is put prevents it from acquiring a physical situs, the maxim may be applied to determine the legal situs for taxation. Thus a vessel engaged in interstate commerce is taxable at the owner's domicile,[4] although

[5] Krueger *v.* Chicago, etc., Ry. Co., 68 Minn. 445.

[6] See 1 HARV. L. REV. 30.

[7] N. Y., etc., Ry. Co. *v.* Bennett, 50 Fed. Rep. 496. See also 10 HARV. L. REV. 186; 12 *ibid.* 61; 14 *ibid.* 70.

[8] See Pouilin *v.* Canadian Pac. Ry. Co., 52 Fed. Rep. 197, 199.

[9] Western Maryland R. R. Co. *v.* Schaun, 97 Md. 563. See also 9 HARV. L. REV. 353.

[10] Hall *v.* Memphis & Charleston R. R. Co., 15 Fed. Rep. 57.

[1] Ayer & Lord Tie Co. *v.* Kentucky, 202 U. S. 409.

[2] Union, etc., Transit Co. *v.* Kentucky, 199 U. S. 194.

[3] Pullman's Palace Car Co. *v.* Pennsylvania, 141 U. S. 18.

[4] See St. Louis *v.* The Ferry Co., 11 Wall. (U. S.) 423. See Ayer & Lord Tie Co. *v.* Kentucky, *supra.*

if it ply wholly within one state its taxable situs is there, no matter where the owner is domiciled.[5] Consequently in regard to a single unit, the artificial situs of domicile controls only in the absence of an actual situs elsewhere.

The taxable situs of a mass of property, such as the rolling stock of a railroad, the specific units of which are constantly moving from state to state, is a question of greater difficulty, which as yet is but partly settled. Property in through transit manifestly cannot acquire a taxable situs,[6] at least so far as the units are concerned. But where a constant average of such units is maintained within the state and enjoys the protection of its laws, it is manifestly unfair that this average should contribute no taxes, even though each particular unit is continually in transit through the state. It was therefore held in Pullman's Co. *v.* Pennsylvania[8] that a foreign corporation might be taxed upon the average number of cars annually within the state, though no particular car obtained a taxable situs therein. This decision was supplemented by Union Transit Co. *v.* Kentucky,[2] which held that a domestic corporation cannot be taxed upon those of its cars permanently beyond the state. And a recent case has decided that a domestic railroad corporation may be taxed upon all its rolling stock, even though specific cars go from time to time beyond the state, on the ground that the state of origin remains the permanent situs, notwithstanding occasional excursions. *New York ex rel. N. Y. C., etc., R. R. Co.* v. *Miller,* 202 U. S. 584. The net result of these decisions is that a railroad cannot be taxed as much as twice upon the whole of its rolling stock, although the question is still undecided whether it may not be taxed twice upon a portion. In other words, although it is clear that the whole rolling stock cannot have a taxable situs in two states at once, it is not settled whether, if a portion obtain a taxable situs in another state, though none of the specific cars do so, such portion ceases to be taxable at the domicile of the corporation. When considered in connection with the Pullman case, the reasoning, though not the decision, in the Union Transit case indicates that this portion would cease to be taxable at the domicile of the corporation, whereas the reasoning in the Miller case indicates that it would not. Certainly the more desirable result is reached by following the former case. It is just that property should be taxed on its full value; it is equally just that no part be taxed twice.[7]

RESPONSIBILITY OF THE DRAWER OF A NEGLIGENTLY DRAWN CHECK. — There is apparently no American case directly deciding where liability shall be placed, when a depositor draws a check in such form as to enable a third person by an insertion to raise the amount successfully, so that a bank using reasonable care honors the check for the altered amount.[1] In similar situations involving other negotiable instruments, there are a number of American decisions, the majority of which hold the careless maker or drawer liable for the altered sum.[2] The ground taken is that, where one of two innocent

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[5] Old Dominion S. S. Co. *v.* Virginia, 198 U. S. 299.

[6] Kelley *v.* Rhoads, 188 U. S. 1.

[7] See also 19 HARV. L. REV. 206.

[1] Exch. Bk. of Spokane *v.* Bk. of Little Rock, 58 Fed. Rep. 140, must be distinguished. The draft there was in the hands of a discounter, and the doctrine of *caveat emptor* applied.

[2] Merritt *v.* Boyden, 119 Ill. 136. *Contra,* Knoxville Nat'l Bk. *v.* Clark, 51 Ia. 264.